

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
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U.S. DISTRICT COURT
DISTRICT OF MASS.

COY PHELPS

PETITIONER

-v-

DAVID WINN, et al.

RESPONDENTS

CASE: 05-40003-GAO

PETITIONER'S

OPPOSITION TO RESPONDENT'S

RULE 12(e) MOTION MADE ON

11-2-2007

DATE: 11-6-07

RESPONDENTS HAVE MOVED THIS COURT TO ALLOW THEM TO TAKE TWO BITES OF THE APPLE WHEN THE FEDERAL RULES OF CIVIL PROCEDURE ALLOW ONLY ONE. THEY HAVE MOVED THE COURT TO ISSUE AN ORDER TO THE PETITIONER FOR A MORE DEFINITE STATEMENT WITHOUT ATTACHING AN AFFIDAVIT SHOWING THAT SUCH IS NECESSARY AND WITHOUT IDENTIFYING ANY SPECIFIC CLARIFICATION. THEY MAKE A BOILERPLATE ALLEGATION THAT THE COMPLAINT IS TOO AMBIGUOUS AND VAGUE FOR THEM TO UNDERSTAND (RUBBERSTAMPING THE TEXT OF THE RULE.)

1. ON 12-30-2004 PHELPS FILED A COMPLAINT BY GIVING IT TO A PRISON OFFICIAL AND IT WAS DOCKETED ON 1-5-05.
2. ON 1-30-2005 PHELPS AMENDED THE COMPLAINT BEFORE ANY RESPONDENT WAS SERVED.
3. ON 3-4-2005 SUMMONS WERE ISSUED BY THE COURT CLERK AND RESPONDENTS WERE SUBSEQUENTLY PROPERLY, AND TIMELY, SERVED AND THE RESPONDENTS HAD UNTIL 5-5-2005 TO RESPOND.

4. THE RESPONDENTS MADE AN UNTIMELY MOTION TO DISMISS ON 7-13-2005 AND MADE TWO AFFIRMATIVE DEFENSES: RULE 12(b)(1) LACK OF SUBJECT MATTER JURISDICTION, AND RULE 12(b)(6) FAILURE TO STATE A CLAIM.

5. PHELPS FILED A TIMELY OPPOSITION TO THE MOTION TO DISMISS ON 7-25-2005

NOW THE GOVERNMENT COMES TO COURT ACTING AS IF NO PAST PROCEEDINGS OCCURRED AVOIDING THE ⁴RAISE OR WAIVE¹¹ RULE AND SEEKS TO DELAY THE PROCEEDINGS, WHICH HAS BEEN IN COURT FOR THREE YEARS.

ON 9-27-2007 THE COURT DISMISSED RESPONDENT PARTIES BOLLINGER, DOLD, THOMPSON, HARVEY, FLETCHER, BLAZON, LEONARD, AND SONNGBGA, AND PHELPS OBJECTED TO THEIR DISMISSAL.

ALTHOUGH POTOLICCHIO IS STILL A PARTY, HE IS NO LONGER AN EMPLOYEE AT FMC DEGENS. BECAUSE HE ASSAULTED PHELPS (AND ADMITTED IT) HE WAS PLACED ON THE "TRANSFER OUT/RESIGNATIONS" LIST (SEE ATTACHMENT) THAT MEANS HE EITHER WAS FORCED TO RESIGN, OR WAS FORCED TO WORK AT ANOTHER FEDERAL AGENCY, OR HIS EMPLOYMENT WAS INVOLUNTARILY TERMINATED.

IRONICALLY, NEITHER DOLD, THOMPSON, HARVEY, FLETCHER, OR LEONARD ARE EMPLOYEES OF THE BOP.

AS TO THE GOVERNMENT'S MOTION FOR A MORE DEFINITE STATEMENT — THEY MUST HAVE A COPY ENTIRELY DIFFERENT FROM OTHERS. THE PAGES OF THE COMPLAINT ARE NUMBERED; THE COMPLAINT HAS HEADINGS AND SUB HEADINGS; BEGINNING AT PAGE 3, ALL PARAGRAPHS ARE NUMBERED; THE STATEMENT OF FACTS HAVE NUMBERED SECTIONS; THE CAUSE OF ACTION

SECTION ARE SUB-TITLED; THE SUMMARY AND CONCLUSION HAS NUMBERED SECTIONS; AND EVEN THE PRAYER FOR RELIEF HAS NUMBERED SECTIONS AND SUB-SECTIONS,

A MOTION FOR A MORE DEFINITE STATEMENT SHOULD NOT BE GRANTED WHEN THE COMPLAINT IS "SUFFICIENT" (TOWNSEND V BOSTON & M.R.R., D.MASS 1940, 35 F.Supp 938) AND EVEN IF THERE IS ONLY ONE SKELETAL PARAGRAPH THAT IS SUFFICIENT, IT IS ENOUGH FOR THE DEFENDANTS TO RESPOND (COX V MAINE MARITIME ACADEMY, D.ME 1988, 122 F.RD 115.)

THE RESPONDENTS DID NOT MAKE AN AFFIDAVIT SHOWING A NEED FOR A MORE DEFINITE STATEMENT AND WITHOUT AN AFFIDAVIT, THE COURT CAN ONLY SPECULATE ON THE MATTER ASSERTED (BICKWELL V LLOYD SMITH, D.C.N.Y 1938, 25 F.Supp 657.)

THE COMPLAINT WAS SUFFICIENT FOR THE RESPONDENTS TO MAKE AN MOTION TO DISMISS ON 7-13-2005.

THE COMPLAINT WAS SUFFICIENT FOR THE COURT TO ISSUE AN ORDER ON 9-27-2007 BASED UPON ITS READING.

THE RESPONDENTS MOTION FOR A MORE DEFINITE STATEMENT IS NOT APPROPRIATE AND IS PRETEXTUAL FOR SOME ULTIMATE MOTIVE TO DELAY THE PROCEEDINGS, AND THE MOTION SHOULD BE DENIED.

DATE: 11-06-07

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TRANSFERS IN/NEW HIRES (SINCE 2/23/05)

Sheryl Rochon	John Asare	Rafael Miranda
Arun Verma	Jonathan Bone	Adrian Maxey
John Hay	Tracy Dickens	Paul Desilets
Lee Cook	Amy Taylor	Anthony Giambrocco
Tamar Rizk-Allan	Diana Ortiz	
Linda Lynde		

TRANSFERS OUT/RESIGNATIONS

Pedro Roman	Concepcion Molina
Mitch Huffman	Diane Kilduff
Holly Brodeur	Helen Flagg
Fazal Bhatti	Ryan Larson
Mark Shaghnessy	Heldi Larson
Bradley Potolocchio	Richard Harsany
John Hancock	Peter Schulz
Brian Huntoon	Kristen Adam
Kyle Beach	Andy Tietjen
Linda Granados	Jeff Powers
Patty Jenkinson	Cindy Ojeda
Jennifer Mullins	Maria Yaponjian
Joseph Allen	Jeroda Smith
Toni Nichols	Linda Duby
Thomas Flaven	Marilyn Park
Angel Santiago	Susan LaPrade
Scott Jenkinson	Russell Bloomfield
Michael Cabral	Colleen Lavorato

OPHER C.
ER A.